Supreme Court, U. S.
FILED
AUG 27 1979
MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

No. 79-329

RALPH J. SKINKISS,

Appellant,

-against-

OWENS-CORNING FIBERGLAS, CORP.,

Appellee,

ON APPEAL FROM THE OHIO SUPREME COURT

JURISDICTIONAL STATEMENT

APPENDIX

Ralph J. Skinkiss
2954 Shetland Road
Toledo, Ohio 43617

IN THE SUPREME COURT
OF OHIO

Ralph J. Skinkiss, Appellant,	)	Cause No: 79-227
v.	)	
Owens-Corning Fiberglas Corp., Appellee,	)	NOTICE OF APPEAL TO THE UNITED STATES SUPREME COURT

Notice is hereby given that Ralph J. Skinkiss, Appellant pursuant to Title 28 of the United States Code, Section 1257 (2) hereby appeals to the United States Supreme Court from the decision entered in this cause on the 12th. day of April 1979 by the Ohio Supreme Court dismissing Appellant's appeal of right from the Lucas County Court of Appeals and the decision entered in this Court on the 10th. day of May 1979 denying Appellant's Motion for Rehearing.

ss
Ralph J. Skinkiss

IN THE COURT OF APPEALS
OF LUCAS COUNTY

Ralph J. Skinkiss, Appellant,	)	Cause No: L-78-105
v.	)	
Owens-Corning Fiberglas Corp., Appellee,	)	NOTICE OF APPEAL TO THE UNITED STATES SUPREME COURT

Notice is hereby given that Ralph J. Skinkiss, Appellant pursuant to Title 28 of the United States Code, Section 1257 (2) hereby appeals to the United States Supreme Court from the decision entered in this cause on the 12th. day of April 1979 by the Ohio Supreme Court dismissing Appellant's appeal of right from the Lucas County Court of Appeals and the decision entered in this Court on the 10th. day of May denying Appellant's Motion for Rehearing.

ss
Ralph J. Skinkiss

THE SUPREME COURT OF OHIO

Ralph J. Skinkiss, Appellant,	)	1979 term
	)	To wit: Apr. 12, 1979
v.	)	
Owen-Corning Fiberglas Corp., Appellee,	)	No. 79-227
	)	APPEAL FROM THE COURT OF APPEALS
	)	for...Lucas...Co.

This cause, here on appeal as of right from the Court of Appeals for Lucas County, was heard in the manner prescribed by law, and no motion to dismiss such appeal having been filed, the Court sua sponte dismisses the appeal for the reason that no substantial constitutional question exists herein.

It is further ordered that a copy of this entry be certified to the Clerk of the Court of Appeals for Lucas County for entry.

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and seal of the Court this.....day of..... 19.....

.....Clerk

.....Deputy

THE SUPREME COURT OF THE STATE OF OHIO

Ralph J. Skinkiss, Appellant,	)	1979 term
	)	To wit: May 10, 1979
v.	)	No. 79-227
Owens-Corning Fiberglas Corp., Appellee,	)	REHEARING

It is ordered by the Court that rehearing in this case is denied.

I, Thomas L. Startzman, of Clerk the Supreme Court of the State of Ohio, do hereby certify that the foregoing entry was correctly copied from the records of said Court, to wit, from Journal No.....Page...

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the Supreme Court this 10th. day of May 1979

..Thomas L. Startzman..Clerk

IN THE COURT OF APPEALS OF LUCAS COUNTY

Ralph J. Skinkiss Appellant,	Court of Appeals No. L-78-105
v.	Trial Court No. CV77-1345
Owens-Corning Fiberglas Corp., Appellee,	DECISION AND JOURNAL ENTRY

Date: Dec. 22, 1978

For the following reasons, the appeal in this case is hereby dismissed for failure to file a timely notice of appeal from the final judgment of February 16, 1978, at appellant's costs.

The notice of appeal herein, filed on May 12, 1978, states that the appeal is from "the (trial) Court's decision of February 15, 1978 (actually filed on February 16, 1978), dismissing plaintiff's action; the Court's decision filed***April 17, 1978, overruling plaintiff's Motion for a rehearing of the Court's decision of February 15, 1978; and the Court's Finding of Fact, Conclusions of Law and Judgment Entry, entered in this action on April 17, 1978."
The final appealable judgment in this case is that entered on Feb. 16, 1978.

The April 17th. order denying the motion for rehearing is not an appealable order. In Re Estate of Bancroft (App. 1959), 82 Ohio Law Abs. 577.

The findings and conclusions in the April 17th. Judgment Entry do no constitute an appealable order. The final paragraph of that entry, to wit:

1.

"It is, therefore, ORDERED and ADJUDGED:

"1. That Defendant Owens-Corning Fiberglas Corporation's Motion for Summary Judgment is in all respects granted; and

"2. That the Complaint is hereby dismissed with prejudice, at plaintiff's costs."

is a reaffirmation of the judgment of February 16; it is not a new appealable judgment, and it does not extend the time for filing an appeal from the February 16 judgment. 4 Ohio Jur. 3d. Appellate Review, Sec. 210

As appellant filed his notice of appeal on May 12, 1978, from a judgment entered on February 16, 1978, the notice was not timely under App. R. 4. and this court has no jurisdiction to hear the

appeal.

Cause remanded to the Lucas County Common Pleas Court for execution for costs.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Ten (10) days from the date hereof this document shall constitute the journal entry of judgment and shall be filestamped by the Clerk of the Court of Appeals, at which time the period for review will begin to run.
App. R. 22 (E).

John W. Potter, P.J. ss
PRESIDING JUDGE

Clifford F. Brown, J. ss
JUDGE

John J.Connors, Jr., J.
concur.

ss
JUDGE

2.

IN THE COURT OF APPEALS OF LUCAS COUNTY

Ralph J. Skinkiss
Appellant,

v.

Owens-Corning
Fiberglas Corp.,
Appellee,

Date: Jan. 11, 1979

Court of Appeals
No. L-78-105

Trial Court
No. CV77-1345

DECISION AND
JOURNAL ENTRY

This cause came to be heard on appellant's motion for reconsideration and appellee's motion to strike appellant's motion. Adhering to our former decision, appellant's motion to reconsider is denied. Appellee's motion to strike is denied as moot.

John W. Potter, P.J. ss
Presiding Judge

Clifford F. Brown, J. ss
Judge

John J. Connors, Jr., J.
concur.

ss
Judge

IN THE COMMON PLEAS COURT
OF
LUCAS COUNTY OHIO

Ralph J. Skinkiss,

Plaintiff,

v. 77-1345

Owens-Corning
Fiberglas Corp.,

Defendant,

This day defendant's motion for summary judgment came on for hearing. Counsel having agreed that no oral arguments were necessary and the court being fully advised in the premises and upon the pleadings, briefs, responses and interrogatories finds pursuant to Rule 56 of the Ohio Rules of Civil Procedure that this case is appropriate for summary judgment since it is clear from the pleadings that there is no genuine dispute as to any material fact. The court further finds that defendant's motion for summary judgment as a matter of law is well taken and hereby grants the same.

In accordance with this finding the court hereby dismisses the claims of the plaintiff as a matter of law. Plaintiff's cause is hereby dismissed with prejudice with plaintiff to pay the costs.

2-15-78
Date

ss
Judge Pietrykowski

IN THE COURT OF COMMON PLEAS
OF
LUCAS COUNTY OHIO

Ralph J. Skinkiss Plaintiff, v. Owens-Corning Fiberglas Corp., Defendant,	)	Case No. 77-1345 MOTION UNDER RULE 52

Now comes the defendant Owens-Corning Fiberglas Corporation and pursuant to Rule 52, Ohio Rules of Civil Procedure, moves the Court for the entry of findings of fact and conclusions of law in regard to its granting of the defendant's motion for summary judgment. Attached is the Judgment Entry containing findings of fact and conclusions of law which the defendant would propose to have the Court enter.

Respectfully Submitted,

ss
John G. Mattimoe

IN THE COURT OF COMMON PLEAS
OF
LUCAS COUNTY OHIO

Ralph J. Skinkiss, Plaintiff, v. Owens-Corning Fiberglas Corp. Defendant,	)	Case No. 77-1345 JUDGMENT ENTRY

Defendant's Motion for Summary Judgment came on for hearing February 3, 1978, and by agreement of the parties was submitted to the Court on the motion briefs, the pleadings, on defendant's Answers to Plaintiff's First and Second Sets of Interrogatories, and on Plaintiff's Answer to Defendant's First Set of Interrogatories, the parties having waived oral argument on said motion and the filing of affidavits with respect thereto.

Upon consideration, the Court finds, holds and orders as follows:

During the period from December 6, 1971 to March 31, 1977 plaintiff was employed by defendant as house patent counsel. Plaintiff alleges that, during December, 1976, a new contract of employment was entered into by the parties as a result of defendant's offering plaintiff a salary increase and agreeing to certain organizational changes to be made for plaintiff's benefit, in consideration of plaintiff's continuing employment. Although disputing this allegation, the defendant has admitted it for the purposes of the motion and the Court has assumed it to be true. Plaintiff's claim is that his employment under the alleged new contract was terminated effective March 31, 1977, without cause.

It appears, however, that the new contract of employment, as claimed by plaintiff, was not for any specific or definite term. Upon being asked, in defendant's Interrogatory No. 11 (d):

> "For what term, or period of time did Mr. Bretz (defendant's representative) propose that you agree to continue your employment with

> Owens-Corning Fiberglas Corporation, as consideration for the salary increase and certain organizational changes which you claim he offered?"

Plaintiff responded:

> "ANSWER, No period of time was discussed."

In the absence of facts and circumstances which indicate that it is for a specific term, an employment contract which makes no provision as to the duration of the employment is terminable at will by either party, Henckel v. Educational Research Counsel, 45 Ohio St. 2d 249, 344 N.E. 2d 118 (1976). Indeed, in his own brief plaintiff appears to concede that such employment contracts of indefinite duration "may be terminated by the parties at any time," (plaintiff's Response to Defendant's Motion for Summary Judgment, 3).

Accordingly, the Court finds and holds that there is no genuine issue of material fact, that defendant is entitled to judgment as a matter of law, and that defendant's Motion for Summary Judgment is well taken.

Subsequent to the submission of this matter to the Court on defendant's Motion for Summary Judgment, the plaintiff moved to compel the defendant to answer plaintiff's interrogatories under the oath of the person making them. The Court finds that a ruling on this motion is unnecessary since, for the purposes of summary judgment, the Court considered the responses to be binding on the defendant corporation regardless of who provided the information or signed the interrogatories.

It is therefore, ORDERED and ADJUDGED:

1. That defendant Owens-Corning Fiberglas Corporation's Motion for Summary Judgment is in all respects granted; and

2. That the Complaint is hereby dismissed with prejudice, at plaintiff's costs.

_____
Judge

APPROVED:

_____
Attorney for Plaintiff

ss

_____
Attorney for Defendant

IN THE COURT OF COMMON PLEAS
OF
LUCAS COUNTY OHIO

Ralph J. Skinkiss, — No. 77-1345

Plaintiff,

v.

Owens-Corning Fiberglas Corp.,

Defendant,

FINDINGS OF FACT, CONCLUSIONS OF LAW JUDGMENT ENTRY

Defendant's Motion for Summary judgment came on for hearing on February 3, 1978, and by agreement of the parties was submitted to the Court on the motion briefs, the pleadings, on Defendant's Answers to Plaintiff's First and Second Sets of Interrogatories, and on Plaintiff's Answer to Defendant's First Set of Interrogatories, the parties having waived oral argument on said motion and the filing of affidavits with respect thereto.

Upon consideration, the Court finds, holds and orders as follows:

During the period from December 6, 1971 to March 31, 1977, Plaintiff was employed by Defendant as house patent

counsel. Plaintiff alleges that, during December 1976, a new contract of employment was entered into by the parties as a result of Defendant's offering Plaintiff a salary increase and agreeing to certain organizational changes to be made for Plaintiff's benefit, in consideration of Plaintiff's continuing employment. Although disputing this allegation, the Defendant has admitted it for the purposes of the motion and the Court has assumed it to be true. Plaintiff's claim is that his employment under the alleged new contract was terminated effective March 31, 1977, without cause.

It appears, however, that the new contract of employment, as claimed by Plaintiff, was not for any specific or definite term. Upon being asked, in Defendant's Interrogatory No. 11 (d):

> "For what term, or period of time did Mr. Bretz (defendant's representative) propose that you agree to continue your employment with Owens-Corning Fiberglas Corporation, as consideration for the salary increase and certain organizational changes which you claim he offered?"

Plaintiff responded:

> "ANSWER. No period of time was discussed."

In the absence of facts and circumstances which indicate that it is for a specific term, an employment contract is terminable at will by either party Henckel v. Educational Research Counsel, 45 Ohio St. 2d 249, 344 N.E. 2d 118 (1976). Indeed, in his own brief Plaintiff appears to concede that such employment contracts of indefinite duration "may be terminated by the parties at any time," (Plaintiff's Response to Defendant's Motion for Summary Judgment, 3).

Accordingly, the Court finds and holds that there is no genuine issue of material fact, that Defendant is entitled to judgment as a matter of law, and that Defendant's Motion for Summary Judgment is well taken.

Subsequent to the submission of this matter to the Court on Defendant's Motion for Summary Judgment, the Plaintiff moved to compel the Defendant to answer Plaintiff's Interrogatories under the oath of the person making them. The Court finds that a ruling on this motion is unnecessary since, for the purposes

of summary judgment, the Court considered the responses to be binding on the Defendant corporation regardless of who provided the information or signed the interrogatories.

It is therefore, ORDERED and ADJUDGED:

1. That Defendant Owens-Corning Fiberglas Corporation's Motion for Summary Judgment is in all respects granted; and

2. That the Complaint is hereby dismissed with prejudice, at Plaintiff's costs.

ss

Judge

IN THE COURT OF COMMON PLEAS
OF
LUCAS COUNTY OHIO

Ralph J. Skinkiss

Plaintiff,

v. 77-1345

ORDER

Owens-Corning
Fiberglas Corporation

Defendant,

This day plaintiff's motion for rehearing came on for hearing. The Court being fully advised in the premises reaffirms its prior decision finding defendant's motion for summary judgment well taken.

It is therefore ordered and adjudged that plaintiff's motion for rehearing is not well taken and is hereby overuled.

ss

Judge Francis A. Pietrykowski

THE
OHIO REVISED CODE

Section 2505.02 Final Order

An order affecting a substantial right in an action which in effect determines the action and prevents a judgment, an order affecting a substantial right made in a special proceeding or upon a summary application in an action after judgment, or an order vacating or setting aside a judgment and ordering a new trial is a final order which may be reviewed, affirmed, modified, or reversed, with or without retrial.

When a court makes such an order granting a new trial, setting aside or vacating a judgment, the court upon the request of either party, shall state in the order the grounds upon which the new trial is granted and the judgment vacated or set aside.

RULES OF PRACTICE OF
THE SUPREME COURT OF OHIO

RULE IX. MOTIONS FOR REHEARING AND ISSUANCE OF MANDATE

Section 1. Motion for rehearing

A motion for rehearing shall be filed within ten days after the announcement of the decision. Such motion must be confined strictly to the grounds urged for rehearing and must not constitute a reargument of the case. Notice of such motion shall be served on opposing counsel who shall have five days to file his memorandum contra.

OHIO RULES
OF
APPELLATE PROCEDURE

RULE 4. Appeal as of right--when taken

(A) Appeals in civil case. In a civil case the notice of appeal required by Rule 3 shall be filed with the clerk of the trial court within thirty days of the date of the entry of the judgment or order appealed from. A notice of appeal filed before entry of such judgment or order shall be treated as filed after such entry and on the day thereof. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within ten days of the date on which the first notice of appeal was filed, or within the time otherwise prescribed by this subdivision, whichever period last expires.

The running of the time for filing a notice of appeal is suspended as to all parties by a timely motion filed in the trial court by any party pursuant to the Civil Rules hereafter enumerated in this sentence, and the full time for appeal fixed by this subdivision com-

Rule 18 Filing and Service of Briefs

The appellant shall serve and file his brief within twenty days after the date on which the record is filed. The appellee shall serve and file his brief within twenty days after service of the brief of appellant. The appellant may serve and file a reply brief within ten days after service of the brief of the appellee.

RULE 26. Application for reconsideration

Application for reconsideration of any cause or motion submitted on appeal shall be made in writing before the judgment or order of the court has been approved by the court and filed by the court with the clerk for journalization or within ten days after the announcement of the court's decision, whichever is the later. The filing of an application for reconsideration does not extend the time for filing a notice of appeal in a court of appeals.

Parties opposing the application must answer in writing within ten days after the filing of the application. Copies of the application, brief, and opposing briefs shall be served as prescribed for the service and filing of briefs in the initial action. Oral argument of an application for reconsideration shall not be permitted except at the request of the court.

OHIO RULES

OF

CIVIL PROCEDURE

RULE 33
INTERROGATORIES TO PARTIES

(A) Availability; procedures for use.

Any party may serve any other party written interrogatories to be answered by the party served. If the party served is a public or private corporation or a partnership or association, the organization shall choose one or more of its proper employees, officers or agents to answer the interrogatories, and the employee, officer or agent shall furnish such information as is known or available to the organization. Interrogatories may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which

event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers and objections within a period designated by the party submitting the interrogatories not less than twenty-eight days after the service thereof or within such shorter or longer time as the court may allow. The party submitting the interrogatories may move for an order under Rule 37 with respect to any objection to or other failure to answer an interrogatory.

OHIO RULES

OF

CIVIL PROCEDURE

RULE 38
JURY TRIAL OF RIGHT

(A) Right preserved.

The right to trial by jury shall be preserved to the parties inviolate.

(B) Demand.

Any party may demand a trial on any issue triable of right by a jury by serving upon the other parties a damand therefor in writing at any time after the commencement of the action and not later than fourteen days after the service of the last pleading directed to such issue.

OHIO RULES

OF

CIVIL PROCEDURE

RULE 52
FINDINGS BY THE COURT

When questions of fact are tried by the court without a jury, judgment may be general for the prevailing party unless one of the parties in writing or orally in open court requests otherwise before the journal entry of a final order, judgment, or decree has been approved by the court in writing and filed with the clerk of the court for journalization, or not later than seven days after the party filing the request has been given notice of the court's announcement of its decision, whichever is later, in which case, the court shall state in writing the conclusions of fact found separately from the conclusions of law.

When a request for findings of fact and conclusions of law is made, the court, in its discretion, may require any or all of the parties to submit proposed findings of fact and conclusions

of law; however, only those findings of fact and conclusions of law made by the court shall form part of the record.

Findings of fact and conclusions of law required by this rule and by Rule 41 (B)(2) are unnecessary upon all other motions including those pursuant to Rule 12, Rule 55 and Rule 56.

An opinion or memorandum of decision filed in the action prior to judgment entry and containing findings of fact and conclusions of law stated separately shall be sufficient to satisfy the requirements of this rule and Rule 41 (B)(2).

RULE 54
JUDGMENTS; COSTS

(A) Definition; Form.

"Judgment" as used in these rules includes a decree and any order from which an appeal lies. A judgment shall not contain a recital of pleadings, the report of a referee or the record of prior proceedings.

RULES OF PRACTICE
COURT OF COMMON PLEAS
LUCAS COUNTY, OHIO

Rule 14.11 - Motions for rehearings of rulings on motions must be filed within three days after rulings are made.

CONSTITUTION
OF THE
UNITED STATES OF AMERICA
AMENDMENT FOURTEEN

Section 1 - All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

CONSTITUTION OF OHIO

Article I Section 5

Trial By Jury

The right of trial by jury shall be inviolate, except that in civil cases, laws may be passed to authorize the rendering of a verdict by the concurrence of not less than three-fourths of the jury.

CONSTITUTION OF OHIO

Article I Section 16

Redress in Courts

All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay. Suits may be brought against the state, in such courts and in such manner, as may be provided by law.

CONSTITUTION OF OHIO

Article IV Section 3 (b)(2)

APPELLATE COURT

Courts of appeals shall have such jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals within the district and shall have such appellate jurisdiction as may be provided by law to review and affirm, modify or reverse final orders or actions of administrative officers or agencies.